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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/06

SPONSOR Foley LAST UPDATED \_\_\_\_\_ HB 904

SHORT TITLE In-State Tuition & Financial Aid Eligibility SB \_\_\_\_\_

ANALYST Williams

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	See Text	Recurring	General Fund ---- Higher Education Funding Formula
	See Text	Recurring	General Fund – State Student Financial Aid
	(\$220.0 to \$600.0)	Recurring; escalates over time; see text	Lottery Scholarship Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 426, which uses legal status as a basis and would deny admission, in-state tuition and state student financial aid.

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Higher Education Department (HED)

### SUMMARY

#### Synopsis of Bill

The bill repeals Section 21-1-4.6(B) NMSA 1976 or Section B of Laws of 2005, Chapter 348.

~~21-1-4.6. Nondiscrimination policy for admission to any public post-secondary educational institution; nondiscrimination in eligibility for education benefits.~~

~~B. Any tuition rate or state funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a general educational development certificate in New Mexico.~~

## FISCAL IMPLICATIONS

According to the fiscal impact report on Senate Bill 582 from the 2005 legislative session and Senate Bill 749 from the 2006 legislative session:

**“Eligible Groups.** There are several groups which would meet the qualification specified in Section B including:

- 1) Students already attending post-secondary institutions - estimated to be between 50 and 250 at state universities. The number of these students at community colleges is not clear, but is thought to be considerably higher.
- 2) Students receiving high school diplomas in New Mexico and meeting the high school attendance test, and
- 3) Individuals receiving a GED in New Mexico and meeting the high school attendance test.

There is a significant lack of data on number of undocumented individuals living in New Mexico; INS estimates do not include breakdown of age cohorts of children. In *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, the Immigration and Naturalization Service (INS) estimates 39,000 people living in New Mexico as unauthorized residents in 2000, nearly double the amount of 20,000 in the state in 1990. NCSL estimates approximately 50,000 to 60,000 undocumented aliens graduate from high schools in the United States annually; state-by-state estimates are not available. Data on the number of undocumented aliens in public schools and post-secondary institutions in New Mexico is not compiled and is not available. HED notes according to the Center for Immigration Studies analysis of the March 2005 current population survey, the immigrant population in New Mexico increased from 107,000 in 2000 to 177,000 in 2005, a 65.1 percent increase.

Data on the number of undocumented aliens in Adult Basic Education or GED programs is not compiled and is not available. The SDE Data Collection and Reporting Unit in its *High School Graduates by Ethnicity* indicates 8,116 Hispanic children graduated from New Mexico public high schools in the 2003-2004 school year. Using the methodology utilized for a fiscal analysis of similar legislation in Texas, one might estimate 10 percent of the 8,116 Hispanic high school students, or 812 high school graduates, might be eligible. *This represents just 4.5 percent of total New Mexico high school graduates.* According to the *SDE Accountability Report*, only 69 percent of New Mexico high school graduates apply to post-secondary institutions. This analysis assumes these students would attend universities and community colleges in the same proportion, resulting in 560 high school graduates eligible annually. SDE reports 377 Spanish GEDs were administered in 2004. Clearly, Spanish GEDs would be requested by both citizens and non-citizens. New Mexico citizens might prefer taking the examination in Spanish, while some undocumented aliens may prefer taking the examination in English. However, assuming 50 percent of the Spanish GEDs were awarded to undocumented residents and using SDE data reflecting 59 percent of all GEDs intend to continue to a post-secondary institution, an estimated 111 additional individuals might be eligible each year.

HED reports currently 195 students are reported as being eligible for in-state tuition and state funded student financial aid without regard to immigration status.

**Fiscal Cost.** An informal survey of university registrars indicates if documentation such as a high school diploma or a GED is issued by the state of New Mexico, then acceptance at in-state

tuition rates is occurring in practice. In previous years, CHE reported inconsistent practices by public post-secondary institutions across the state with respect to admissions policies and assessment of resident tuition. *As a result of these practices, the net impact from a surge in eligible students on the general fund is not significantly large. In this case, the effective incremental cost of the amended bill stems from extending eligibility to the lottery scholarship program.*

Further, in November 2004, the Commission on Higher Education (CHE) revised its residency regulation (5.7.18 NMAC). One of the changes approved was to delete the former section 5.7.18.9 D. which defined “Non-U.S. Citizen”. The language that was deleted from the regulation read as follows: ““Non-U.S. citizen” means persons and their children who are not citizens of the United States shall be classified as residents or non-residents on the same basis as citizens of the United States if they are lawfully in the United States and have obtained permanent resident status from the Immigration and Naturalization Service (INS). Non-citizens on other visas (e.g. diplomatic student, visitors or visiting scholars) shall be classified as nonresidents. Service in the armed forces of the United States shall entitle the noncitizen to be classified as nonresident or resident on the same basis as a citizen.” The impact of this change was to provide institutions with broader discretion in determining the residency status of prospective students according to the overall residency policy.

In the absence of these practices, in theory the legislation could decrease General Fund appropriations by roughly \$5.8 million in FY10 due to the higher education formula funding which pays for each enrolled student. As each successive class enters the higher education system, costs would have increased exponentially. Formula-driven FY13 general fund impacts would have been estimated at roughly \$19.3 million.

The reduction in Lottery Tuition Scholarship Fund expenditures is estimated from \$220 to \$600 thousand in the first full year of implementation, since students enrolling in Fall 2007 would no longer be eligible to receive the lottery scholarship. The associated savings to the lottery tuition scholarship fund could grow to approximately \$3.7 million in FY11. While data on the numbers of these students is not available, this projection uses the methodology and data discussed above and is intended to provide illustrative scenarios.

Finally, General Fund appropriations support other state student financial aid programs. This legislation would result in fewer claims for state student financial aid and/or the need to supplement current funding levels over time.

This analysis assumes the HED would not interpret the legislation as a non-resident tuition waiver. There is no assumption for increases in the number of undocumented residents over time, i.e. no significant increases in undocumented immigration to the state for any reason. This analysis assumes individuals moving to New Mexico to receive GEDs would not be eligible unless they had attended a New Mexico high school for one year. This assumption is critical to the cost impacts.

### **SIGNIFICANT ISSUES**

According to NCSL, non-documented immigrants or illegal aliens are defined as non-U.S. citizens who have entered the United States without proper documentation and without complying with U.S. Immigration and Natural Service (INS) procedures.

Federal laws entitle undocumented immigrants, regardless of status, access to public schools in the United States, but prohibit granting financial aid and in-state tuition at post-secondary educational institutions. In the 1980's, the Attorney General of the State of New Mexico which was interpreted that these students might be assessed in-state tuition. The Commission on Higher Education (CHE) requested an opinion from the Attorney General regarding status of federal regulation and in-state tuition in 2001. In 2003, the Attorney General sent correspondence to the Commission on Higher Education on its authority to change regulations on the issue.

In 2005 legislation, the current statutory provision makes higher education more affordable and accessible for immigrant students meeting residency requirements as well as offer associated economic opportunities. Due to their immigration status, these students do not qualify for most financial aid. The bill could lower drop-out rates. Further, some institutions already admitted these students at in-state tuition rates, and the 2005 legislation clarified this practice at the state's higher education institutions so that all students in the state are treated equally regardless of their immigration status.

Ten states offer in-state tuition to undocumented students. Texas expanded eligibility to state student financial aid programs as well. Legislation to restrict access to higher education to these students has been introduced in Alaska, Missouri, Nevada, North Carolina and Virginia. Proposition 300 passed in Arizona in 2006 prevents students who are not legal residents of the United States from paying in-state tuition at public colleges, receiving financial aid paid with state funds, and participating in adult-education classes offered by the Arizona Department of Education.

According to the *Chronicle of Higher Education* in December 2005, out-of-state students attending California public colleges filed a lawsuit to challenge California's law to allow undocumented students to pay in-state tuition. The lawsuit seeks an estimated \$600 million dollars in damages from the state's three public college systems. The lawsuit represents 60,000 students who have attended University of California, California State University and California community colleges since 2002. The basis for the suit is the equal protection clause of the 14<sup>th</sup> Amendment of the US Constitution as well as 1996 federal immigration law which states immigrants who are not legally in the United states cannot be eligible, based on their residence in a state, for "any postsecondary benefit unless a citizen or national of the United States is eligible for such a benefit."

California officials indicate the program does not violate federal law because it bases eligibility on high school attendance and graduation, not residence in the state. Interestingly, University of California noted 70 percent of the 1,300 UC students under the program are US citizens, including those students whose families move out of California just after the student graduates from high school and students whose families live out of state, but who attend boarding schools in California.

**OTHER SUBSTANTIVE ISSUES**

HED notes:

“In a state like New Mexico, students who are undocumented and qualify for admission, in-state tuition rates, and state-funded financial aid as per Section 21-1-4.6 NMSA 1978, have lived in the United States and New Mexico for a number of years. The students' parents have worked and paid taxes to the State of New Mexico for years. In addition, many students have gone through the New Mexico educational system for all or the majority of their schooling. These individuals will continue to live in New Mexico and in the United States. By educating these students, you are preparing them to be contributing members of our society and part of our educated citizenry.”

AW/csd